



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN**  
ATTORNEY GENERAL

**AUSTIN, TEXAS 78711**

February 14, 1967

Hon. Preston Smith  
Lieutenant Governor  
State of Texas  
Austin, Texas

Opinion No. M-23

Re: Whether chiropractic services  
are included in the provisions  
of Section 2 of Senate Bill 2,  
Acts 60th Legislature. (Med-  
ical Assistance Act of 1967.)

Dear Governor Smith:

You have requested the opinion of this office as to whether chiropractic services are included in the provisions of Section 2 of Senate Bill 2, Acts of the 60th Legislature, the proposed Medical Assistance Act of 1967.

Section 2 of Senate Bill 2, the proposed Medical Assistance Act of 1967, provides, in part, that:

"It is the intent of the Legislature to make statutory provision which will enable the State of Texas to provide Medical Assistance on behalf of needy individuals of this State and to enable the State to obtain all benefits provided by the Federal Social Security Act as it now reads or as it may hereafter be amended, or by any other Federal Act now in effect or which may hereafter be enacted within the limits of funds available for such purposes. Wherever used in this Act the term 'Medical Assistance' shall include all of the health care, services, assistance and benefits authorized or provided for in such Federal Legislation." (Emphasis added.)

The proposed Medical Assistance Act of 1967, Senate Bill 2, is enabling legislation to authorize the State of Texas, acting through the State Department of Public Welfare, to receive grants, pursuant to Title XIX of the Social Security Act, enacted by the Social Security Amendments of 1965 (Public Law 89-97) for medical assistance programs.

Section 1902 of the Social Security Act (42 U.S.C.A. § 1396a) provides, in part, that:

"(a) A State plan for medical assistance must. . . .

"(1) provide that. . . .

". . . .

"(10) provide for making medical assistance available to all individuals receiving aid or assistance under State plans approved under titles I, IV, X, XIV, and XVI; and. . . .

"(A) . . .provide that the medical assistance made available to individuals receiving aid or assistance under any such State plan. . . .

"(1) Shall not be less in amount, duration or scope than the medical assistance made available to individuals receiving aid or assistance under any other such State plan, and

"(11) . . . .

". . . .

"(13) provide for inclusion of some institutional and some non-institutional care and services, and effective July 1, 1967 provide (A) for inclusion of at least the care and services listed in clauses (1) through (5) of Section 1905(a). . . ." (Emphasis added.)

Section 1905 of the Social Security Act (42 U.S.C.A. § 1396d) provides, in part, that:

"(a) The term 'medical assistance' means payment of part or all of the cost of the following care and services. . . .

". . . .

- "(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);
- "(2) outpatient hospital services;
- "(3) other laboratory and x-ray services;
- "(4) skilled nursing home services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older;
- "(5) physicians' services, whether furnished in the office, the patient's home, a hospital, or a skilled nursing home, or elsewhere;
- "(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;
- "(7) . . . ." (Emphasis added.)

The Handbook of Public Assistance Administration, Supplement D, Medical Assistance Programs, prepared by the U. S. Department of Health, Education, and Welfare, sets forth, at page 3 of Section D-5141, certain definitions applicable to Section 1905(a) (5) and Section 1905(a) (6) of the Social Security Act. In connection with the physicians' services provided for in Section 1905(a) (5), the following definition is set forth:

"The term 'physicians' services' is defined as those services provided, within the scope of practice of his profession as defined by State law, by or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy."  
(Emphasis added.)

In connection with the medical care or other type remedial care provided for in Section 1905(a) (6), the following definition is set forth:

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"This term is defined as any services other than physicians' services, provided within the scope of practice as defined by State law, by an individual licensed as a practitioner under State law." (Emphasis added.)

Pursuant to the foregoing provisions of Title XIX of the Social Security Act (Public Law 89-97), and the applicable definitions found in the Handbook of Public Assistance Administration, a State desiring to avail itself of the medical assistance program benefits provided for in Title XIX of the Social Security Act must, in its plan, provide the medical assistance services set forth in Section 1905(a)(1) through (5). The remainder of the medical assistance services set forth in Section 1905(a)(6) through (15) are merely services which the State plan may provide if it so desires, unless they are presently being provided by the State under an existing medical assistance program, in which event such medical assistance services must be continued.

Pursuant to the provisions of Article 695j, Vernon's Civil Statutes, the State of Texas presently has in operation a program providing for certain medical benefits to recipients of public assistance. Section 1 of Article 695j provides in part that:

"(a) The term 'Medical Assistance' means monetary assistance paid to a vendor of medical services and/or vendor of hospital services or a vendor of nursing care rendered on behalf of a recipient of public assistance. 'Medical Assistance' shall be in addition to and separate from the grants of public assistance payable directly to the recipients.

"(b) The term 'vendor of medical services' means any person as defined under Sub-section (1) of this Section providing medical services to a recipient of public assistance.

". . . .

"(1) The term 'physician' means a person licensed by the Texas State Board of Medical Examiners.

". . . ." (Emphasis added.)

Section 4 of Senate Bill 2, the proposed Medical Assistance Act of 1967, provides, in part, that:

"The State Department is hereby authorized and empowered to determine the scope of the services to be covered. . . ."

"Medical Assistance provided for these groups shall be not less in scope, duration, or amount than is currently furnished such groups, and in addition, shall include at least the minimum services required under Federal Laws and rules and regulations. . . ."

"The State Department is authorized and empowered, at such times as the State Department may determine feasible and within the limits of appropriated funds, to extend the scope, duration, and amount of Medical Assistance on behalf of these groups of public assistance recipients and related groups as are mandatory so as to include, in whole or in part, the optional medical services authorized under Federal Laws and rules and regulations. . . ." (Emphasis added.)

Senate Bill 2, the proposed Medical Assistance Act of 1967, authorizes the State Department of Public Welfare to engage in a medical assistance program whereby the State of Texas will be able to receive Federal matching funds pursuant to Title XIX of the Social Security Act. The scope of medical services to be made available to public assistance recipients is left to the discretion of the State Department of Public Welfare within the limits of available funds. However, to qualify for Federal matching funds pursuant to Title XIX of the Social Security Act, the State Department of Public Welfare must include in its medical assistance program the services set forth in Section 1905(a)(1) through (5) of the Social Security Act. Such being the case, the "physicians' services" provided for in Section 1905(a)(5) of the Social Security Act must be made available to public assistance recipients. However, such "physicians' services" must be supplied by individuals licensed in Texas to practice medicine or osteopathy.

Consequently, we are of the opinion that in view of the fact a chiropractor offering chiropractic service is not licensed to practice medicine or osteopathy in the State of Texas pursuant to the provisions of Articles 4495-4512, Vernon's Civil Statutes, but is licensed to

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practice chiropractic pursuant to the provisions of Article 4512b, Vernon's Civil Statutes, such chiropractic services are not included within the terms of "physicians' services" set forth in Section 1905(a)(5) of the Social Security Act. Also, as chiropractic services are presently not available to public assistance recipients by virtue of Article 695j, it is not mandatory that such services be made available under the provisions of the proposed Medical Assistance Act of 1967, Senate Bill 2, to comply with the requirements of Title XIX of the Social Security Act. However, in this connection, should the State Department of Public Welfare elect to extend the medical benefits available pursuant to the Medical Assistance Act of 1967 to those services referred to in Section 1905(a)(6) of the Social Security Act, then, in such event, chiropractic services could be made available to public assistance recipients.

#### S U M M A R Y


To comply with the provisions of Title XIX of the Social Security Act, whereby Federal matching funds can be obtained, Senate Bill 2, the proposed Medical Assistance Act of 1967, must make available the medical assistance benefits set forth in Section 1905(a)(1) through (5) of the Social Security Act (42 U.S.C.A. § 1395d) to public assistance recipients. Such benefits do not include, however, chiropractic services.

The State Department of Public Welfare is given the authority under Senate Bill 2, the Medical Assistance Act of 1967, to extend at its discretion, the scope of benefits available to recipients of public assistance to include those services set forth in Section 1905 (a)(5) through (15) of the Social Security Act (42 U.S.C.A. § 1395d). Should the State Department of Public Welfare elect to extend medical

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assistance benefits to those services referred to in Section 1905(a)(5) of the Social Security Act, then, in such event, chiropractic services could be made available to public assistance recipients.

Very truly yours,

  
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APPROVED:  
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